



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0870]

RIN 1625-AA00

Safety Zone; Patapsco River, Baltimore, MD

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Patapsco River. This action is necessary to provide for the safety of life on these navigable waters near the Francis Scott Key (I-695) Bridge, Baltimore, MD, while work crews install power transmission lines crossing over the Patapsco River on December 3, 2021, and on December 4, 2021 (alternate dates December 6, 2021, and on December 7, 2021). This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective from 9 a.m. on December 3, 2021, to 3:30 p.m. on December 7, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0870 in the “SEARCH” box and click “SEARCH.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways

Management Division, U.S. Coast Guard; telephone 410-576-2674,

email Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On November 17, 2021, Baltimore Gas and Electric Company (BGE) notified the Coast Guard that it will be conducting activities associated with the installation of new overhead power transmission lines crossing over the Patapsco River from the vicinity of the Hawkins Point terminal Station on the west side of the Patapsco River to a location just north of Sollers Point Terminal Station on the east side of the Patapsco River, from 9 a.m. to 11:30 a.m. and from 1 p.m. to 3:30 p.m. on December 3, 2021, and during the same times on December 4, 2021. If necessary due to inclement weather or other reason on December 3, 2021, it will be enforced from 9 a.m. to 11:30 a.m. and from 1 p.m. to 3:30 p.m. on December 6, 2021. If necessary due to inclement weather or other reason on December 4, 2021, it will be enforced from 9 a.m. to 11:30 a.m. and from 1 p.m. to 3:30 p.m. on December 7, 2021. This installation process requires the temporary closure of the navigation channel near the Francis Scott Key (I-695) Bridge and the temporary closure of other portions of the Patapsco River nearby.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause

finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to public interest to delay the effective date of this rule.

Immediate action is needed to respond to the potential safety hazards associated with the installation of new overhead power transmission lines crossing over the Patapsco River within the navigation channel near the Francis Scott Key (I-695) Bridge and other portions of the Patapsco River nearby. The Coast Guard was unable to publish a NPRM due to the short time period between project planners notifying the Coast Guard of the work and publication of this safety zone. It is impracticable and contrary to the public interest to publish an NPRM because we must establish this safety zone by December 3, 2021.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with the installation of power transmission lines over the Patapsco River adjacent to Francis Scott Key (I-695) Bridge conducted within the federal navigation channel and other portions of the river nearby. Such hazards include low-hanging or falling ropes and cables, helicopter rotor downwash and noise, dangerous projectiles, and or other debris.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP Maryland-National Capital Region has determined that potential hazards associated with the overhead power transmission line installation work will be a safety concern for anyone transiting the Patapsco River. This

rule is needed to ensure the safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled work.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 a.m. on December 3, 2021, to 3:30 p.m. on December 7, 2021. The safety zone will be enforced from 9 a.m. to 11:30 a.m. and from 1 p.m. to 3:30 p.m. on December 3, 2021, and during the same times on December 4, 2021. If necessary due to inclement weather or other reason on December 3, 2021, it will be enforced from 9 a.m. to 11:30 a.m. and from 1 p.m. to 3:30 p.m. on December 6, 2021. If necessary due to inclement weather or other reason on December 4, 2021, it will be enforced from 9 a.m. to 11:30 a.m. and from 1 p.m. to 3:30 p.m. on December 7, 2021. The safety zone will cover all navigable waters of the Patapsco River, encompassed by a line connecting the following points beginning at the shoreline at Thoms Cove at position latitude 39°12'36" N, longitude 076°32'50" W, thence east and south along the shoreline to Hawkins Point at latitude 39°12'40" N, longitude 076°31'58" W, thence northeast across the Patapsco River to Coffin Point at latitude 39°13'55" N, longitude 076°30'18" W, thence west and north along the shoreline to Sollers Point at latitude 39°14'01" N, longitude 076°30'59" W, thence west across the Patapsco River to and terminating at the point of origin, located at Baltimore, MD.

The duration of the rule and enforcement of the zone is intended to ensure the safety of vessels and these navigable waters while the activities associated with the installation of new overhead power transmission lines crossing over the Patapsco River are being conducted. The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners. Vessels or persons violating this rule

are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192).

Except for craft and equipment operated by BGE, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, duration, day-of-week, and time of year of the safety zone. Vessels or persons will not be allowed to enter or transit a portion of the Patapsco River for a total 10 enforcement-hours. Due to the nature of the work and the hazards it presents to the workers and the public, the COTP has identified the need to close the Patapsco River in the vicinity of the overhead power line crossing while this work is ongoing. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism,

if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 10 total enforcement hours that will prohibit entry within certain navigable waters of the Patapsco River. It is categorically excluded from further review

under paragraph L60(c) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.T05-0870 to read as follows:

§ 165.T05-0870 Safety Zone; Patapsco River, Baltimore, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of the Patapsco River, encompassed by a line connecting the following points beginning at the shoreline at Thoms Cove at position latitude 39°12'36" N, longitude 076°32'50" W, thence east and south along the shoreline to Hawkins Point at latitude 39°12'40" N, longitude 076°31'58" W, thence northeast across the Patapsco River to Coffin Point at latitude 39°13'55" N, longitude 076°30'18" W, thence west and north along the shoreline to Sollers Point at latitude 39°14'01" N, longitude 076°30'59" W, thence west across the

Patapsco River to and terminating at the point of origin, located at Baltimore, MD. These coordinates are based on datum NAD 83.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410-576-2693 or on Marine Band Radio VHF-FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement periods.* This section will be enforced:

(1) From 9 a.m. to 11:30 a.m. and from 1 p.m. to 3:30 p.m. on December 3, 2021. If necessary due to inclement weather or other reason on December 3, 2021, it will be enforced from 9 a.m. to 11:30 a.m. and from 1 p.m. to 3:30 p.m. on December 6, 2021.

(2) From 9 a.m. to 11:30 a.m. and from 1 p.m. to 3:30 p.m. on December 4, 2021. If necessary due to inclement weather or other reason on December 4, 2021, it will be enforced from 9 a.m. to 11:30 a.m. and from 1 p.m. to 3:30 p.m. on December 7, 2021.

Dated: November 23, 2021.

David E. O'Connell,

Captain, U.S. Coast Guard,

Captain of the Port Maryland-National Capital Region.

[FR Doc. 2021-25958 Filed: 11/26/2021 8:45 am; Publication Date: 11/29/2021]